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PROPOSED ATTORNEYS FOR THE DEBTOR

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:

BUFFET PARTNERS, L.P., et al.

DEBTORS.¹

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CASE NO. 14-30699-11

CHAPTER 11

Jointly Administered

**DEBTORS' APPLICATION FOR AN ORDER
AUTHORIZING THE EMPLOYMENT AND RETENTION OF JAMES W. SARGENT
AS SPECIAL FINANCE COUNSEL PURSUANT TO 11 U.S.C. §§ 327(e) AND 328(a)
NUNC PRO TUNC TO THE PETITION DATE**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors-in-possession (the "Debtors"), by this application ("Application"), seek entry of an order authorizing the Debtors to employ and retain James W. Sargent as special finance counsel for the Debtors pursuant to Sections 327(e) and 328(a) of title 11 of the United States Code (11 U.S.C §§ 101 *et seq.*, the "Bankruptcy Code"), effective *nunc pro tunc* to the Petition Date (defined below). In support of this Application, the Debtors rely on the Affidavit of James W. Sargent (the "Sargent Affidavit") attached hereto as Exhibit A. In further support of this Application, the Debtors respectfully represent as follows:

¹ The Debtors in these chapter 11 cases are Buffet Partners, L.P. and Buffet G. P., Inc.

1. This Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334.

2. This is a core proceeding within the meaning of 28 U.S.C. § 157(b).

3. Venue of these chapter 11 cases in this District is proper under 28 U.S.C. §§ 1408 and 1409.

4. On February 4, 2014 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), thereby commencing these chapter 11 cases (the "Cases"). The Debtors' motion for joint administration of the Cases is pending. The Debtors continue in possession of their property and they are operating and managing their business as debtors in possession pursuant to the provisions of 11 U.S.C. §§ 1107(a) and 1108.

5. No trustee or examiner has been appointed in the Debtors' Chapter 11 Cases, nor has a creditors' committee or other official committee been appointed pursuant to 11 U.S.C. § 1102.

6. The factual background relating to the Debtors' commencement of these Cases is set forth in detail in the Declaration of Barry M. Barron, Sr., Chief Executive Officer of Buffet Partners, L.P., filed on the Petition Date.

7. The Debtors seek the entry of an order, substantially in the form of the proposed order submitted herewith, pursuant to sections 327(e) and 328(a) of the Bankruptcy Code, authorizing the employment and retention of Mr. Sargent as special finance counsel for the Debtors.

8. The Debtors submit that the retention of Mr. Sargent under the terms described herein is appropriate under sections 327(e) and 328(a) of the Bankruptcy Code. With the court's approval, debtors in possession have the power to employ attorneys who have previously represented the debtors as special counsel pursuant to section 327(e) of the Bankruptcy Code, which provides:

The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interests of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e). Simply put, section 327(e) authorizes the retention of an attorney who previously represented debtors prepetition, provided that: (a) such retention is for a special purpose; (b) the purpose of the retention is not to conduct the chapter 11 cases; (c) the retention is in the best interests of the estates; and (d) the attorney does not hold any interest adverse to the debtors respecting the subject of its retention. As detailed below, the Debtors' proposed retention of Mr. Sargent as special finance counsel falls squarely within the scope of and purpose for which Congress enacted section 327(e).

9. Mr. Sargent's proposed retention pursuant to section 327(e) of the Bankruptcy Code is for the limited purpose of providing counsel related to finance matters. Mr. Sargent is an attorney licensed to practice in the state of Texas, primarily practicing in the field of commercial finance, whose office is at 3215 Saint Johns Drive, Dallas, Texas 75205. Thus services specially involving or related to finance matters are best provided by Mr. Sargent.

10. Mr. Sargent's proposed retention is for the limited matters described herein. Baker & McKenzie LLP ("B&M") has filed an application to serve as general bankruptcy counsel to the Debtors, while Mr. Sargent will focus on issues limited to finance matters.

Mr. Sargent will not render services typically performed by B&M as the Debtors' general bankruptcy counsel. B&M and Mr. Sargent will make every effort to avoid overlap of their work. By clearly delineating each counsel's particular roles, the Debtors, B&M and Mr. Sargent have ensured that legal services will not be duplicated.

11. Mr. Sargent's retention as special counsel is in the best interests of the Debtors, their estates and their creditors. The Debtors selected Mr. Sargent to provide these services because, among other things, Mr. Sargent has represented the Debtors since March 2009. He represented the Debtors with respect to the Debtors' financing with Chatham Capital Management II, LLC and its affiliated entities, with respect to certain of the Debtors' equipment leasing transactions, and with respect to various other commercial matters.

12. Based on his experience, Mr. Sargent is familiar with the loan documents, equipment leases, and financial issues involved in this case. He also recently provided representation to the Debtors in the months prior to the filing regarding non-disclosure and confidentiality agreements and regarding supply agreements. Through these engagements, Mr. Sargent has obtained extensive knowledge and an in-depth understanding of the Debtors' capital structure, assets, liabilities, business and operations.

13. Mr. Sargent attests in the Sargent Affidavit that he does not presently hold or represent any interest adverse to the interests of the Debtors or their estate, and is disinterested within the meaning of 11 U.S.C. §101(14) to the best of his knowledge.

14. Section 328(a) of the Bankruptcy Code authorizes the employment of a professional person "on any reasonable terms and conditions of employment, including a retainer." 11 U.S.C. § 328(a). As of the filing date Mr. Sargent may have invoices outstanding to the Debtors. If approved as special counsel pursuant to this Application, any prepetition

amounts not related to the filing of these cases will be waived by Mr. Sargent. Amounts related to the filing of these cases will be included in a fee application for approval by the Court.

15. Subject to this Court's approval, Mr. Sargent will charge the Debtors for his legal services on an hourly basis in accordance with his ordinary and customary rates for matters of this type in effect on the date such services are rendered, and will seek reimbursement of all costs and expenses incurred in connection with these Cases as set forth in the Sargent Affidavit filed concurrently herewith. The compensation to be paid to Mr. Sargent shall be \$300 per hour.

16. As to the time spent in assisting and advising the Debtors regarding the services described above, Mr. Sargent will comply with this Application, sections 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, the Local Rules of this Court and any orders of the Court, the fee and expense guidelines established by the United States Trustee and all other applicable requirements, including the submission of detailed time records in tenths of an hour.

17. In accordance with section 504 of the Bankruptcy Code, there is no agreement or understanding between Mr. Sargent and any other entity for the sharing of compensation received or to be received for services rendered in connection with these proceedings.

18. The Debtors believe that Mr. Sargent's terms as set forth in the Sargent Affidavit are fair and reasonable in light of industry practice, market rates both in and out of chapter 11 cases, and the scope of work to be performed pursuant to his retention and his services' importance to the Debtors.

19. The Debtors believe that it is necessary and in the best interest of their estate and creditors to employ and retain Mr. Sargent as their special finance counsel in these Cases and any related proceedings.

WHEREFORE, the Debtors respectfully request that the Court enter the proposed order, substantially in the form annexed to this Application, (i) authorizing the Debtors to employ and retain Mr. Sargent as special finance counsel for the Debtors and (ii) granting such other and further relief as the Court deems appropriate.

Dated: February 7, 2014

Respectfully submitted,

BAKER & McKENZIE LLP

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By: /s/ John E. Mitchell

John E. Mitchell, SBT # 00797095

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**PROPOSED ATTORNEYS
FOR THE DEBTORS**

CERTIFICATE OF SERVICE

This is to certify that on February 7, 2014, a copy of the foregoing document was served on the parties registered to receive electronic notification via the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas, and on those parties listed on the Debtors' Master Service List.

/s/ Rosa A. Shirley

Rosa A. Shirley